

**In the High Court of New Zealand
Wellington Registry
I Te Kōti Matua o Aotearoa
Te Whanganui-ā-Tara Rohe**

CIV-2012-485-2591

Under sections 271 and 284 of the Companies Act 1993
In the matter of Ross Asset Management Limited (in liquidation) and related entities

Between

John Howard Ross Fisk and David John Bridgman, as liquidators of Ross Asset Management Limited (in liquidation), Dagger Nominees Limited (in liquidation), Bevis Marks Corporation Limited (in liquidation), United Asset Management Limited (in liquidation), McIntosh Asset Management Limited (in liquidation), Mercury Asset Management Limited (in liquidation) Ross Investments Management Limited (in liquidation) and Ross Unit Trusts Management Limited (in liquidation) each being Chartered Accountants of Wellington and Auckland respectively

Applicants

and

Eoin David Fehsenfeld,

Respondent

**Memorandum of counsel for the Applicants seeking
clarification on orders**

3 September 2018

BELL GULLY

BARRISTERS AND SOLICITORS

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May it please the Court –

1. Counsel for the applicants refer to the decision dated 8 August 2018 on the applicants' application for directions as to the distribution of the assets of Ross Asset Management Limited (in liquidation) (**RAM**) (the **Application**).
2. Counsel are in the process of sealing the orders and respectfully request that Your Honour clarifies one matter.
3. On 19 June 2018 Mr Barrington John Prince applied for leave to appear and be heard on the Application. Although it was not so expressed, it was understood to in fact be an application for joinder, as Mr Prince also sought appeal rights on the decision. (See affidavit of Barrington Prince filed in support of his application at para 68).
4. The Applicants did not oppose him being joined as a respondent to the proceeding, but proposed that:
 - (a) Mr Prince's affidavit (redacted for matters subject to legal professional privilege) be accepted as legal submissions, not evidence, and taken as read; and
 - (b) if Mr Prince were to seek to make oral submissions in addition to his written submissions, that such oral submission be very limited and only to amplify key points.

(See Memorandum of counsel for the Liquidators in respect of application by Barrington Prince, dated 21 June 2018 at para 9).
5. Mr Prince advised the Court that he consented to the Liquidators' proposals at paragraph 4(a) and (b) above (see Memorandum of Barrington Price dated 21 June 2018). He subsequently confirmed this at the hearing and the hearing proceeded on that basis.
6. To the best of counsel's recollection, there was no formal order made as to Mr Prince's joinder application at the hearing – although all parties seemed to proceed on the basis Mr Prince had been joined. Nor does

the judgment of 8 August 2018 expressly address Mr Prince's application for joinder.

7. While counsel appreciate that it may have been implicit at the hearing, that Mr Prince's application for joinder was granted, they seek confirmation of this prior to including an order for joinder in the judgment.

Dated 3 September 2018



M G Colson / R L Pinny
Counsel for the Plaintiffs